

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Andrea Mayer-Bruestle,  
Complainant,  
vs.  
Committee for VOTE a/k/a 833  
YesYesYes,  
Respondent.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
PROBABLE CAUSE HEARING**

On October 28, 2013, Andrea Mayer-Bruestle filed a Campaign Complaint with the Office of Administrative Hearings alleging that the Committee for Vote a/k/a 833 YesYesYes (Committee) violated Minn. Stat. §§ 211A.02, 211A.05, 211B.04 and 10A.20 in connection with Independent School District 833's referendum questions on the ballot in the November 5, 2013, election.

In correspondence sent by email to the undersigned Administrative Law Judge on October 29, 2013, Ms. Mayer-Bruestle requested to withdraw two of her claims: the claim alleging that the Committee violated Minn. Stat. § 211A.02 by failing to file a campaign financial report ten days prior to the general election (claim #3), and the claim alleging that the Committee failed to report expenditures on print and online advertising (claim #4).

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth claims that, if proven, would constitute violations of Minn. Stat. § 211A.02 on the part of the Committee. These claims, identified as #2 and #5 in the Complaint, will proceed to a probable cause hearing. The remaining claims are dismissed. This determination is described in more detail in the attached Memorandum.

**THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN THAT:**

- (1) The Complaint alleges *prima facie* violations of Minn. Stat. § 211A.02 in claim #2 and claim #5. These claims will proceed to a probable cause hearing;
- (2) All of the other claims alleged in the Complaint are **DISMISSED**;
- (3) This matter is scheduled for a probable cause hearing on the alleged violations of Minn. Stat. § 211A.02, to be held by telephone before the undersigned Administrative Law Judge at **2:30 p.m. on Monday, November 4, 2013.** The hearing will be held by call-in telephone conference.

To participate, you must call: **1-888-742-5095** at the required time. When the system asks for your numeric pass code, enter **752-390-7175#** on your phone and you will be connected to the conference.

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. By **12:00 p.m. on Monday, November 4, 2013**, the parties shall provide to the Administrative Law Judge all documentary evidence bearing on the case, with copies to the opposing party. Documents may be emailed to Administrative Law Judge Barbara J. Case at [Barbara.Case@state.mn.us](mailto:Barbara.Case@state.mn.us) or faxed to (651) 361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35.

If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: October 31, 2013

s/Barbara J. Case  
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BARBARA J. CASE  
Administrative Law Judge

## MEMORANDUM

This Campaign Complaint concerns Independent School District 833's (South Washington County Schools) referendum questions that are on the ballot in the November 5, 2013 election. The referendum questions seek to renew the district's expiring referendum for 10 years, increase the district's operating referendum for 10 years, and increase funding for future building needs. According to the Complaint, the Respondent Committee has engaged in activities to promote passage of the ballot questions that have violated fair campaign practices and financial reporting laws. The Complaint alleges nine claims. Each will be discussed below.

### Standard of Review

In order to set forth a *prima facie* case of violations of Minn. Stat. §§ 211A and 211B, a complainant must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of either or both of those two chapters.<sup>1</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true. The allegations do not need independent substantiation.<sup>2</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove violations of chapter 211A or 211B occurred.<sup>3</sup>

### Governing Statutes

Minnesota Statutes section 211A.02, subdivision 1, requires candidates or committees who receive contributions or make disbursements of more than \$750 in a calendar year to file campaign financial reports listing, among other things, the total amount of receipts and expenditures made during the period of time covered by the report. In addition to an initial financial report, a candidate or committee must also file a report ten days before a general or special election, and 30 days after a general or special election.<sup>4</sup>

Minnesota Statutes section 211A.05 subd. 1, requires that candidates or committee treasurers certify to the filing officer that all financial reports required by section 211A.02 have been submitted, or certify that the candidate or committee did not receive contributions or make disbursements exceeding \$750 in the calendar year. The certification must be submitted to the filing officer no later than seven days after the general or special election.

If a candidate or committee fails to file a required financial report on the date it is due, the filing officer shall immediately notify the candidate or committee of the failure to

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<sup>1</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Minn. Stat. § 211A.02, subd. 1(b)(3).

file.<sup>5</sup> If the report is not filed within ten days after the notification is mailed, the filing officer shall file a complaint under section 211B.32.<sup>6</sup>

Pursuant to Minn. Stat. § 211B.04,<sup>7</sup> campaign material must include a disclaimer identifying the name and address of the person or committee that prepared and disseminated the material. Any person who prepares or disseminates campaign material that does not prominently include a disclaimer substantially in the form provided in section 211B.04 is in violation of the statute.

### **Claim #1**

The Complaint alleges that the Committee violated Minn. Stat. § 211A.05 by failing to properly fill out a campaign financial report that was filed on or about October 18, 2013. Specifically, the Complaint points out that the Committee failed to identify on the second line of the report the “office sought or ballot question” at issue.

Because Minn. Stat. § 211A.05 governs the failure to file campaign financial reports required under section 211A.02, and not the failure to include certain information in the report, the Complaint fails to allege a *prima facie* violation of Minn. Stat. § 211A.05. This claim is dismissed.

### **Claim #2**

The Complaint alleges that the Committee violated Minn. Stat. § 211A.02 by failing to accurately disclose financial information. In the Committee’s first campaign financial report filed on or about October 18, 2013, for the reporting period June 2013 to October 4, 2013, the Committee lists “\$0” in total contributions and “\$3,236.50” in total expenditures with “\$2200” cash on hand. The Complaint appears to be alleging that the Committee has failed to accurately report contributions it must have necessarily received in order to make the expenditures and accumulate cash on hand.

“Contribution” is defined to mean anything of monetary value that is given or loaned to a candidate or committee for a political purpose.<sup>8</sup> The apparent discrepancy between the reported amount of contributions (\$0) received between June and October 2013, and the amount of expenditures and cash on hand is sufficient to support finding a *prima facie* violation of Minn. Stat. § 211A.02. This claim will proceed to a probable cause hearing.

### **Claims #3 and #4**

Claims #3 and #4 concerned the Committee’s alleged failure to file a campaign financial report ten days prior to the general election and failure to report specific expenditures on advertising. After filing this Complaint, the Complainant learned that

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<sup>5</sup> Minn. Stat. § 211A.05, subd. 2.

<sup>6</sup> Minn. Stat. § 211A.05, subd. 2.

<sup>7</sup> Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 and 2.

<sup>8</sup> Minn. Stat. § 211A.01, subd. 5.

the report was timely filed. On October 29, 2013, the Complainant requested by email that these claims be withdrawn.

Claims #3 and #4 are withdrawn.

### **Claim #5**

The Complaint alleges that the Committee failed to report on its campaign financial report the value of a conference room and mailing address located at 7650 Parkwood Place in Woodbury, that the Complaint alleges was contributed to the Committee for its use beginning June 2013. The Complainant estimates the value of this contribution to be approximately \$2,655, based on a monthly rent of \$560.

The Complaint has alleged sufficient facts to support a *prima facie* violation of Minn. Stat. § 211A.02 with respect to this claim and this claim will proceed to a probable cause hearing.

### **Claim #6**

The Complaint alleges that the Committee violated Minn. Stat. § 211B.04 by failing to “post signage” at the 7650 Parkwood Place location “designating the office as the ‘Committee for Vote’ location.”

Minn. Stat. § 211B.04 requires campaign literature to include a disclaimer identifying the name and address of the person or committee causing the material to be prepared or disseminated. There is no requirement under Minn. Stat. § 211B.04 that a building or office post signage on the premises that identifies a campaign committee’s location. The Complaint has failed to allege a *prima facie* violation of Minn. Stat. § 211B.04 with respect to this claim. Accordingly, claim #6 is dismissed.

### **Claim #7**

The Complaint alleges the Committee violated Minn. Stat. §§ 211A.02 and 10A.20 by failing to file final yearly campaign financial reports for levy referendum campaigns occurring in years since the committee was formed in 2006.

This claim is dismissed for two reasons. First, the claim is beyond the one year statute of limitations provided for at Minn. Stat. § 211B.32, subd. 2. Under the Fair Campaign Practices Act, complaints must be filed with the office within one year after the act or failure to act that is the subject of the complaint. In addition, with respect to the section 10A.20 allegation, the Office of Administrative Hearings’ jurisdiction with respect to campaign complaints is limited to adjudicating violations of Minn. Stat. ch. 211A and 211B. It does not have jurisdiction to hear claims arising under chapter 10A.<sup>9</sup> Accordingly, claim #7 is dismissed.

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<sup>9</sup> The Campaign Finance and Public Disclosure Board investigates claimed violations of law arising under Minn. Stat. ch. 10A. See, Minn. Stat. § 10A.02, subd. 11.

## **Claims #8 and #9**

The Complaint alleges the Committee failed to use a “correct mailing address” on campaign material and failed to amend its campaign material to include the correct mailing address when it was notified of the “incomplete address.” The Complainant has attached copies of the Committee’s campaign material that includes the following disclaimer: “Prepared and Paid for by Committee for Vote 7650 Currell Blvd., Woodbury, MN 55125.”

The Complaint does not explain how the address listed in the disclaimer is incorrect or incomplete. The Complaint does not, for example, state that mail sent to this address has been returned as undeliverable. The statute requires only that the name and address of the Committee be included on campaign material. The photocopies of pictures of lawn signs and other campaign material submitted with the Complaint show that the material includes a disclaimer with the Committee’s name and address.

The Complaint fails to allege sufficient facts to support a violation of Minn. Stat. § 211B.04 with respect to claims #8 and #9. Accordingly, these claims are dismissed.

## **Summary**

The Complainant’s allegations of section 211A.02 reporting violations in claim #2 and claim #5 will proceed to a probable cause hearing as ordered. All of the other claims in this Complaint are dismissed.

**B. J. C.**